

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SAFARI CLUB INTERNATIONAL, et al.,

No. 2:22-cv-01395-DAD-JDP

Plaintiffs,

v.

ROB BONTA, in his official capacity as  
Attorney General of the State of California,

ORDER GRANTING DEFENDANT'S  
MOTION TO CLARIFY THE PRELIMINARY  
INJUNCTION

(Doc. No. 34)

Defendant.

This matter came before the court on July 16, 2024 for a hearing on defendant's motion to clarify the preliminary injunction. (Doc. No. 34.) Attorneys Cameron Schlagel and Michael B. Reynolds appeared by video on behalf of plaintiffs Safari Club International, The United States Sportsmen's Alliance Foundation, and Congressional Sportsmen's Foundation. California Deputy Attorney General Gabrielle Downey Boutin appeared by video on behalf of defendant Rob Bonta. For the reasons explained below, the court will grant defendant's motion to clarify the preliminary injunction issued by this court.

**BACKGROUND**

Plaintiffs, three sportsmen advocacy organizations, bring constitutional challenges to a California statute that prohibits firearm industry members from advertising or marketing firearm-related products in a manner that is designed, intended, or reasonably appears to be attractive to

1 minors. *See* Cal. Bus. & Prof. Code § 22949.80(a)(1) (“A firearm industry member shall not  
 2 advertise, market, or arrange for placement of an advertising or marketing communication  
 3 offering or promoting any firearm-related product in a manner that is designed, intended, or  
 4 reasonably appears to be attractive to minors.”).

5 On August 5, 2022, plaintiffs initiated this action against defendant seeking an order  
 6 declaring § 22949.80 unconstitutional, on its face and as applied to them, and enjoining its  
 7 enforcement. (Doc. No. 1 at ¶ 2.) On October 18, 2022, plaintiffs filed their operative FAC,  
 8 asserting claims for: (1) violation of their right to freedom of speech under the First Amendment;  
 9 (2) violation of the right to commercial speech under the First Amendment; (3) violation of their  
 10 rights to association and assembly under the First Amendment; and (4) violation of the  
 11 overbreadth doctrine under the First Amendment; (5) violation of the Fifth and Fourteenth  
 12 Amendments because the provision is void for vagueness; and (6) violation of the Equal  
 13 Protection Clause under the Fourteenth Amendment. (Doc. No. 12 at ¶¶ 98–176.)

14 On October 21, 2022, plaintiffs filed a motion for a preliminary injunction seeking to  
 15 enjoin the enforcement of § 22949.80. (Doc. No. 13.) On January 12, 2023, this court issued an  
 16 order denying plaintiffs’ motion for preliminary injunction. (Doc. No. 23.) On February 10,  
 17 2023, plaintiffs appealed the court’s denial of their motion for a preliminary injunction to the  
 18 Ninth Circuit. (Doc. No. 25.) On September 22, 2023, the Ninth Circuit reversed and remanded  
 19 for further proceedings.<sup>1</sup> (Doc. No. 30.) On February 28, 2024, the Ninth Circuit issued its  
 20 mandate. (Doc. No. 31.)

21 On March 20, 2024, the parties filed a joint status report and attached a proposed order  
 22 granting plaintiffs’ motion for preliminary injunction. (Doc. Nos. 32, 32-1.) On April 12, 2024,  
 23 the court signed the parties’ proposed order granting the preliminary injunction. (Doc. No. 33.)  
 24 The order preliminarily enjoined defendant “from enforcing California Business & Professions  
 25 Code § 22949.80.” (*Id.* at 2.) On May 15, 2024, defendant filed the pending motion to clarify the

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26 <sup>1</sup> In its memorandum decision the Ninth Circuit stated: “For the reasons outlined in *Junior*  
 27 *Sports Magazines v. Bonta*, No. 22-56090 (9th Cir. Sept. 13, 2023), we reverse the denial of  
 28 preliminary injunction and remand for further proceedings consistent with that opinion.” (Doc.  
 No. 30 at 1–2.)

1 preliminary injunction, seeking an order from the court clarifying that the preliminary injunction  
 2 issued by the court applies only to California Business and Professions Code § 22949.80,  
 3 subdivision (a). (Doc. No. 35 at 4.) On May 29, 2024, plaintiffs filed an opposition to  
 4 defendant's motion to clarify the preliminary injunction, and on June 7, 2024, defendant filed a  
 5 reply thereto. (Doc. Nos. 36, 37.) On June 25, 2024, defendant filed a notice of supplemental  
 6 authority notifying the court of a decision in *Junior Sports Magazines v. Bonta*, No. 2:22-cv-  
 7 04663-CAS-JC, wherein United States District Judge Christina A. Snyder, upon remand from the  
 8 Ninth Circuit, granted a preliminary injunction enjoining enforcement of California Business and  
 9 Professions Code § 22949.80, subdivision (a), but denied the plaintiffs' motion to enjoin  
 10 enforcement of § 22949.80 in its entirety.<sup>2</sup> (Doc. No. 38 at 15–16.)

## 11 **LEGAL STANDARD**

12 “The power of a court of equity to modify a decree of injunctive relief is long-established,  
 13 broad, and flexible.” *Brown v. Plata*, 563 U.S. 493, 542 (2011) (internal citation omitted). A  
 14 district court has discretion to clarify or modify the scope of an injunction. *Smagin v.*  
 15 *Yegiazaryan*, No. 2:14-cv-09764-RGK-PLA, 2020 WL 1652347, at \*3 (C.D. Cal. Apr. 1, 2020)  
 16 (“A district court has discretion to clarify the scope of an injunction.); *see also Sacramento*  
 17 *Homeless Union v. Cnty. of Sacramento*, 617 F. Supp. 3d 1179, 1199 (E.D. Cal. 2022) (granting  
 18 but modifying the request for injunctive relief sought by the plaintiffs). By clarifying the scope of  
 19 a previously issued injunction, a court “add[s] certainty to an implicated party’s effort to comply  
 20 with the order and provide[s] fair warning as to what future conduct may be found  
 21 contemptuous.” *N.A. Sales Co., Inc. v. Chapman Indus. Corp.*, 736 F.2d 854, 858 (2d Cir. 1984).  
 22 “[C]larification may be obtained on motion by a party or made on the court’s own motion.”  
 23 *Smagin*, 2020 WL 1652347, at \*3; *see also Armstrong v. Brown*, 768 F.3d 975, 980 (9th Cir.  
 24 2014) (“[A] district court may *sua sponte* order or modify injunctive relief.”). If a party  
 25 “contends that the scope of [an] injunction is overly broad . . . the proper approach would be for  
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27 <sup>2</sup> The court notes that according to the docket in *Junior Sports Magazines v. Bonta*, No. 2:22-cv-  
 28 04663-CAS-JC, plaintiffs appealed from this decision to the Ninth Circuit Court of Appeals on  
 June 28, 2024 and the parties in that case are awaiting the decision of the appellate court.

1 [that party] to seek a modification or clarification of the injunction from the district court”).

2 *Connecticut Gen. Life Ins. Co. v. New Images of Beverly Hills*, 321 F.3d 878, 883 (9th Cir. 2003).

### 3 ANALYSIS

4 The parties disagree on the scope of the injunction issued in this case, and in particular  
5 whether this court intended to enjoin enforcement of California Business and Professions Code  
6 § 22949.80 in its entirety, or only subdivision (a). Defendant argues that subdivision (a) is the  
7 only provision of § 22949.80 that plaintiffs have challenged in this action, as their complaint and  
8 operative first amended complaint (“FAC”) allege only that the advertising provision appearing in  
9 subdivision (a) is unconstitutional, and plaintiffs did not challenge, or even address, subdivision  
10 (b) which “limits the use and dissemination of the personal information of minors.” (Doc. No. 35  
11 at 5–7.) In opposition, plaintiffs argue that their FAC states that they seek to enjoin “California  
12 Business & Professions Code section 22949.80” which would include subdivision (b), and that  
13 the Ninth Circuit in *Junior Sports Magazines* stated “that [Section] 22949.80 is likely  
14 unconstitutional under the First Amendment” without distinguishing between the statute’s  
15 subdivisions. (Doc. No. 36 at 12–13.) Plaintiffs also argue for the first time that subdivision (b)  
16 is not simply a privacy provision but also “plainly restricts commercial speech” and fails under  
17 the *Central Hudson* test. (*Id.* at 14–17) (citing *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv.*  
18 *Comm’n of New York*, 447 U.S. 557 (1980)). At the hearing on the pending motion to clarify the  
19 injunction, plaintiffs also proffered that because the court already entered an order enjoining  
20 defendant from “enforcing California Business & Professions Code § 22949.80,” it would be  
21 most appropriate to leave the order as originally entered.

22 The court first addresses plaintiffs’ argument that the court should not clarify its order  
23 enjoining enforcement of the statute because the order has already been entered. The court does  
24 not find this argument to be persuasive because, as discussed above, district courts clearly have  
25 the authority and discretion to issue orders clarifying or modifying injunctions they issue.  
26 Further, the court now clarifies that when it issued its order granting a preliminary injunction in  
27 this case, the court intended to enjoin only enforcement of California Business and Professions  
28 Code § 22949.80(a), and not the statute in its entirety. This is because, as defendant argues, in

1 moving for preliminary injunctive relief plaintiffs focused their arguments entirely upon  
 2 subdivision (a) and did not mention, let alone address, subdivision (b) of the statute. (See Doc.  
 3 Nos. 13 at 11–13, 16–32; 18 at 3–12.) However, the court issued its order pursuant to the parties'  
 4 stipulation which stated that defendant would be enjoined from “enforcing California Business &  
 5 Professions Code § 22949.80.” The court’s failure to specify that only § 22949.80(a) was  
 6 enjoined was simply oversight on the court’s part.<sup>3</sup>

7 Next, the court addresses plaintiffs’ argument that enjoining subsection (b) as well is  
 8 required by the scope of the Ninth Circuit’s mandate in this case. The rule of mandate provides  
 9 that any “district court that has received the mandate of an appellate court cannot vary or examine  
 10 that mandate for any purpose other than executing it.” *Hall v. City of Los Angeles*, 697 F.3d  
 11 1059, 1067 (9th Cir. 2012). But when a court is “confronted with issues that the remanding court  
 12 never considered, the mandate ‘requires respect for what the higher court decided, not for what it  
 13 did not decide.’” *Id.* (quoting *United States v. Kellington*, 217 F.3d 1084, 1093 (9th Cir. 2000)).

14 Here, the Ninth Circuit’s mandate simply stated that: “For the reasons outlined in *Junior*  
 15 *Sports Magazines v. Bonta*, No. 22-56090 (9th Cir. Sept. 13, 2023), we reverse the denial of  
 16 preliminary injunction and remand for further proceedings consistent with *that* opinion.” (Doc.  
 17 No. 31 at 1–2) (emphasis added). Accordingly, the court turns to the substance of the Ninth  
 18 Circuit’s opinion in *Junior Sports* to determine the breadth of the order and apply it to the present  
 19 case. In doing so, the court observes that the Ninth Circuit in *Junior Sports* did not mention nor  
 20 address the constitutionality of § 22949.80(b). Further, the court agrees with Judge Snyder’s  
 21 analysis in *Junior Sports* that California Business and Professions Code § 22949.80(b) proscribes  
 22 different conduct than subsection (a) and does not fall within the scope of the Ninth Circuit’s

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27 <sup>3</sup> Defendant’s counsel stated at the hearing on the pending motion that defendant’s agreement to  
 28 the language of the parties’ stipulation was also an oversight on counsel’s part.

1 analysis of the constitutionality of subsection (a) in *Junior Sports*.<sup>4</sup> Accordingly, this court  
2 concludes that the issuance of an injunction enjoining enforcement of § 22949.80(b) is not  
3 supported or appropriate at this time based upon what has been submitted to this court.

4 After analyzing the Ninth Circuit's mandate in this case, and the corresponding mandate  
5 and opinion in *Junior Sports Magazines v. Bonta*, the court will grant defendant's motion for  
6 clarification and will clarify that the preliminary injunction entered on April 12, 2024 in this case  
7 enjoins enforcement only of California Business and Professions Code § 22949.80(a).<sup>5</sup>

8 **CONCLUSION**

9 For the reasons set forth above,

10 1. Defendant's motion to clarify the injunction (Doc. No. 34) is GRANTED; and  
11 2. The court hereby clarifies that pursuant to Rule 65 of the Federal Rules of Civil  
12 Procedure, Defendant California Attorney General Rob Bonta and the California  
13 Department of Justice, their officers, agents, servants, employees, and anyone else

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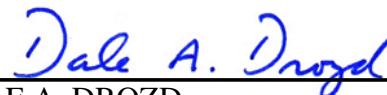
18 <sup>4</sup> “Subsection (b) appears to regulate the use, disclosure, and compilation of minors' personal  
19 information. Its prohibition is specifically limited to the use, disclosure, and compilation of such  
20 information with knowledge that such conduct 'is for the purpose of marketing or advertising to  
21 [the relevant] minor[s] any firearm-related product.' Cal. Bus. & Prof. Code 22949.80(b). In  
22 other words, it appears that subsection (b) does not prevent a firearm industry member from  
23 maintaining the private information of minors and making that information available to members  
24 of other non-firearm industries e.g., toy manufacturers, food product producers, etc. Subsection  
25 (b) therefore appears to be a privacy regulation targeted specifically at efforts to market/advertise  
26 firearms to minors, rather than a general regulation regarding the privacy of minors. The likely  
27 constitutionality of such a regulation has not been fully briefed and was not addressed by the  
28 Ninth Circuit, which only addressed the constitutionality of a ban on firearm advertisements to  
*Junior Sports Magazines v. Bonta*, No. 2:22-cv-04663-CAS-JC, Doc. No. 69, at \*10 (C.D. Cal. June 18, 2024).

5 Of course, if plaintiffs wish to now move for preliminary injunctive relief as to subdivision (b)  
of the statute, they are certainly free to do so. The court would expect that any such motion  
would be supported by briefing significantly different than that submitted in support of plaintiffs'  
original motion.

1 in active concert or participation with any of the aforementioned people or entities, are  
2 preliminarily enjoined from enforcing California Business & Professions Code § 22949.80(a).  
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4 IT IS SO ORDERED.  
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6 Dated: November 4, 2024

  
7 DALE A. DROZD  
8 UNITED STATES DISTRICT JUDGE  
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